

UNITED STATES DISTRICT COURT FOR
THE SECOND CIRCUIT, IN THE SOUTHERN
DISTRICT OF NEW YORK

PEPI SCHAFLER

15 CV 7863

Plaintiff

v

JUDGE ROMÁN

BANK OF AMERICA MERRILL LYNCH

Defendants

COMPLAINT

FILED
U.S. DISTRICT COURT
2015 OCT -5 PM 4:29
S.D. OF N.Y.W.P.

INTRODUCTION

Jurisdiction

This Court has jurisdiction of this matter pursuant to the following:

28 U.S.C. 1331 holds that the district court shall have original jurisdiction of all civil actions arising under the Constitution. and laws of the United States.

28 U,S,C 1332 The district court shall have original jurisdiction of all civil actions in which the amount in controversy exceeds \$75.000

(1) and is between citizens of different states

Plaintiff is located in the State of Maryland, and the Defendant is located of the city of New York, state of New York.

28 U.S.C. 1391 © A defendant that is a corporation shall be deemed a citizen in any judicial district where the defendant might be found ..

THE GRAVAMEN OF THIS COMPLAINT

The Plaintiff hereby alleges numerous acts of malfeasance and misconduct , conspiracy, conversion embezzlement ,negligence, suborning forgery and theft, failure to adhere to law, meet their fiduciary duty, fraud, along with other, bad acts by the Defendant Bank of America Merrill Lynch, causing Plaintiff the loss of securities valued at the time of \$429.000, and whose current value is \$1.250..000--\$1.500.000 including splits, and buybacks.

One Defendants had their investment banking business-Bank of America Investments in San Francisco., Plaintiff had been a situational resident in the Northern California Bay area. Plaintiff eventually returned to the east coast, to Bethesda MD, , the current domicile. The actions subject of this complaint took place in California.. Through mergers and acquisitions Bank of America Investments is now Bank of America Merrill Lynch in New York City.

Two Due to the anger of a scorned former spouses, false allegations by same, and in conspiracy with a San Francisco attorney named .Dennis Davis a court ordered that Plaintiffs retirement funds, all in securities be handed over to the court for safe keeping , while fabricated and false allegations are reviewed. Mr. Davis immediately made arrangements with Bank of America Investments, for an rrangement for him to profit from these securities and even own them. if possible

Three In compliance ,Plaintiff retained counsel for this event and in Plaintiffs presence counsel handed the securities to the court , which in turn handed them to Mr. Davis, telling him to keep them safe and secure.

Four The following are the securities handed over: Disney 1200 shares, AT&T 250 shares, McDonalds 600 shares,,Coca Cola 400 shares, ,GE 800 shares AOL 2120 shares, Eli Lilly 100 shares , ,Symbol Tech. 337 shares, Cardinal Health 562 shares, ,.Microsoft 720 shares,, Lucent Tech.256 shares , Chevron 100 shares, Biogen 200 shares, DELL 125 shares, Amazon 200 shares. The total value of these securities when handed over, was \$429..000..

Five. By prearrangement ,but in opposition to the courts direction, and in conspiracy with Bank of America Merrill Lynch Mr. Davis presented the stocks to Bank of America Merrill Lynch for conversion, ignoring the courts directive,, the facts ,the law, and began the process of converting the securities to himself.'

Six While the legal process to return the securities was ongoing ,and a date was set for a decisional hearing , Mr. Davis in conspiracy with Defendants Bank of America Merrill Lynch conspired to deprive Plaintiff of her securities. by enabling Mr. Davis to transfer the securities in to his own name.

Seven. It is common knowledge that stock certificate are respected documents,, and any transactions involving them are subject to the owners agreement and signature, otherwise it is the crime theft and forgery. There were 15 stock certificates, in Plaintiffs name,, forged by Mr. Davis signature, and the forgery was guaranteed by Bank of America Merrill Lynch with their medallion..

Eight In brazen disregard of their responsibilities, Defendant bank assisted and enabled Mr. Davis with the forging of Plaintiffs signature on the security certificates . Additionally Defendant Bank of America Merrill Lynch used their medallion stamp to validate and guarantee these forgeries and embezzlements .All this was to enable the securities to be liquidated at will, and steal the proceeds. Bank of America Merrill Lynch was negligent , suborned and committed forgery .fraud, criminal maneuvers ,and other forbidden acts.

Nine. After the criminal conversion was completed, Defendants placed the now liquid funds in an account in the name of Mr. Davis. –a gift.to him.. Bank of America Merrill Lynch in their misconduct ,fraud and deceit,, with gross egligence made Mr. Davis a wealthy man.

Ten The Defendants Bank of America Merrill Lynch knew with 100% certainty that they were the bailees of this property as per the courts directions., which was a common role, for a fiduciary institutions.

Eleven What was uncommon and impermissible was for Defendants an investment bank, to forge Plaintiffs signature on 15 Stock Certificates,, use their medallion stamp to deceive those issuer institutions,, steal Plaintiffs funds , and place them in an account accessible only to Mr. Davis.

Twelve. Having changed the title of the Stock certificates, Mr. Davis was immediately pocketing the dividends and any stock splits that occurred.

Thirteen Defendants actions were, deviant, corrupt, .malicious. and a violation off their fiduciary duties and responsibilities...

Fourteen There had been legal discussions about returning the securities to Plaintiff,, while Mr. Davis who had fabricated a few brazen lies,, was opposing, and fabricating fraudulent entitlements to same for himself.. A hearing date was set At the time neither Plaintiff nor her counsel knew what a corrupt, lawless ,brazen ;criminal Mr.. Davis is,, Nor was the intense relationship with Bank of America Merrill Lynch known and how negligence, and lawless the Defendant bank was.. It would be many years of learning , unraveling, and an unknown informant. to enlighten us..

Fifteen During the hearing the court hinted that it might be inclined to favor Mr. Davis, but said everything will be stayed for 10 days to enable counsel to obtain a stay ,and file a notice of appeal, because he was not changing the securities title as yet. He did not know either of the fraud already committed.

Sixteen Plaintiffs counsel did that , was granted a stay, by a federal court and filed a notice of appeal. That stay lasted more than 15 month.

Seventeen But there was another plan executed that afternoon. ,which is the core of this complaint. When the hearing was over , Mr. Davis who fabricated an order,, forged the judges signature, filed itwith the clerk, went over to Bank America Merrill Lynch and presented this false forged fabricated order, and walked out with \$ 250,000 as a start Crime paid well.'.

Eighteen Mr. Davis made a few more visits to his benefactor bank with more forged orders , some later, to pocket the rest of the money, or any funds hat had accrued in the interim, still forging the courts signature .

Nineteen It would take many years before Plaintiff or counsel would learn of this brazen criminal act,, theft and fraud that enabled Mr..Davis to enrich himself with more than one half million dollars .The perpetrators created theater as diversion from fraud , theft and criminal activity.

Twenty After the 15 month stay the court , a Federal District Court judge of the ninth circuit issued a mixed order saying that the lower court did not sign the order regarding the funds, but he might have meant to , but the funds are gone .What does it mean they are gone? Should she have spoken out? Did anyone foresee the depths of this criminal conversion and conspiracy?

Twenty one Plaintiff who had earned a law degree and was Bar qualified and ready., had discharged counsel, because with her securities in detention, some where paying fees was no longer possible, and undertook *in persona* legal representation..

Twenty two Numerous appeals -but more like searches were undertaken by Plaintiff, but the reply was always the same : “the securities and or the funds are gone “ without further detail. Plaintiff ascribed his failure to locate and comply with the law as required, or plain general disinterest and disregard.

Twenty three The court originally involved with the hearing , and the federal court that knew that no court had signed the orders to steal Plaintiffs securities, as did Bank of America Merrill Lynch which helped convert them and pocket the funds . should have spoken, out because they knew the facts , the truth, and the criminal fraud perpetrated.; Their willful blindness is deplorable.

Twenty four The federal district court having ordered a stay, the embezzlement and theft of Plaintiffs securities by Bank of America Merrill Lynch, the proceedings, stretching for years ;the fate of the securities remained unknown. The legal process remained moot, and the funds were gone, without a trace Plaintiff California, and returned to the east coast. . One day an envelope arrived without return address .stamped as coming from California. In that envelope was a copy of the falsified and self fabricated forged order by Mr. Davis dated the hearing day..

Twenty five.. This mailed order explained the sequence of events, :
Mr. Davis having a ready forged court order, exited yhe hearing , and headed to Bank of America Merrill Lynch , and walked out with \$250.000 in his bank account. or his pocket He took the rest over a period of a couple of years

Twenty six Despite all of Plaintiffs exhaustive efforts , Plaintiff or her past counsel could never have imagined that the misconduct by Bank of America Merrill Lynch ,conspiring with, and enabling Mr. Davis who is a brazen deviant crook and criminal ,could steal her assets her retirement funds,. Plaintiff lost more than one million dollars in securities, plus dividends, splits and other.

Twenty seven Bank of America Merrill Lynch violated their duty, when being a security intermediary. Rule 8-504 of the Uniform Commercial Code holds that they had a duty of reasonable care to protect Plaintiff securities.

Twenty eight In addition to knowingly having embezzled Plaintiff s Securities under false pretenses, Bank of America Merrill Lynch violated Rule - 8 -105 of the UCC 105 , which opposes willful blindness as an excuse and defense...

Twenty Nine . The frequent interactions by Bank of America Merrill Lynch with Mr. Davis familiarized or should have done so if interested with Mr. Davis's character, his activities and his hand writing. He impersonated and forged Plaintiffs, name and signature on the securities, and thereafter the Judges signature.. Mr.Davis is also a brazen grotesque liar a thief, and a criminal.

THEREFORE

AS A FIRST CAUSE OF ACTION

Thirty The Plaintiff realleges paragraphs number one through twenty nine with the same force and an affect as specifically repleaded herein.

Thirty one Contrary to and in total disregard of the manner of facts and applicable law ,and in conspiracy with a malfeasant, Defendants agreed to commit prohibited acts without right or standing., with the potential of harm'

Thirty two The conspiracy by Defendant Bank of America Merrill Lynch was contrary to law and in violation thereof.

Thirty three Despite the commonly expected ,and a clear obligation to act with integrity at all times, Bank of America Merrill Lynch failed to do so.

AS FOR A SECOND CAUSE OF ACTION

Thirty four The Plaintiff realleges paragraphs One to Thirtythree with the same force and effect as specifically pleaded herein.

Thirty five Contrary to law , and as a result of the conspiracy in which the Defendant Bank of America Merrill Lynch, , in complete disregard of Plaintiffs property rights, of her security certificates , through fraud and deceit agreed to change the title on fifteen stock certificates from Plaintiff name in to the name of Mr. Davis ,This fraudulent conversion was without permission and in disregard of law and property rights This fraudulent conversion of the security certificates was to facilitate their ultimate theft.

Thirty six Despite the clear and absolute duty and obligation to safe guard Plaintiffs property entrusted by the court for safekeeping the Defendant Bank of America Merrill Lynch violated the law and Plaintiffs rights.

AND FOR A THIRD CAUSE OF ACTION

Thirty seven The Plaintiff realleges paragraphs One to thirty six with the same force and effect as specifically pleaded therein .

Thirty eight *Ab initio* Defendant Bank of America Merrill Lynch engaged in misconduct , malfeasance ,dereliction of duty, unlawful and improper behavior by suborning forgery and fraud, , and through failure to meet the fiduciary responsibility that one had a right to expect. Therefore the conclusion is that the bank of America Merrill Lynch accepted Plaintiffs securities for safe keeping under false pretenses. The assurances and expectations of integrity were fraudulent. .

Thirty nine Consequently .the commonly expected integrity and duty, by Defendant Bank of America Merrill Lynch was really fraud and deceit.

AND FOR A FOURTH CAUSE OF ACTION

Forty The Plaintiff realleges paragraph One through Thirty nine with the same force and effect as specifically therein..

Forty one On the day that the court ordered a stay on the decision regarding the fate of the securities and further opinions to be gathered from higher courts, in the total failure of the fiduciary duty of Bank of America Merrill Lynch negligently, in violation of law and the normal standards of responsibility by banks,, through previous acts of fraud established lawlessness in the conversion of Plaintiffs securities,, and through gross unforgivable reckless negligence ,and fraud, accepted from Mr. Davis a self fabricated court order in witch the courts signature was forged by Mr. Davis, This brazen despicable fraud hould have been noticed by all the bank people , in which he falsely claimed that the court had signed it ; because. Mr. Davis was a criminal . In conspiracy with Bank of America Merrill Lynch had previously aided and abetted other frauds and criminalities by Mr. Davis such as forging Plaintiff's signature on fifteen "stock certificates.", and guaranteeing the integrity of that. .One hour after the court in question said otherwise, Mr. Davis immediately became richer by \$450.000. courtesy of Defendant Bank of America Merrill Lynch, while Plaintiff was robbed of her stocks..

Forty two The actions by Defendant Bank of America Merrill Lynch where negligent,, fraudulent ,irresponsible, reprehensible, corrupt, contrary to law and in violation thereof

AND FOR A FIFTH CAUSE OF ACTION

Forty three The Plaintiff realleges paragraph One through Forty two with the same force and affect as specifically pleaded therein.

Forty four. Bank of America Merrill Lynch engaged in prohibited acts which were criminal;, and regrettably the Plaintiff has only a civil remedy... It must not be overlooked that they enabled, participated and were the catalyst for grave criminal act, which they enabled and participated in, Mr. Davis an attorney did forge Judge Randal Newsome's signature numerous times. and those forged and fabricated documents were accepted and acted upon by the Defendants Defendants forged Plaintiffs name on 15 separate stock certificates from 15 separate companies, without ever verifying anything, or putting Plaintiff on notice that this is being done. By choice Bank of America Merrill Lynch conspired vw3ith a major criminal, despite his having a law license, without any consideration for Plaintiffs property, and her rights. The Defendants are liable .;

Forty five Instead of protecting the law, the court , or Plaintiffs securities,; Bank of America Merrill Lynch helped and joined Mr. Davis in the embezzlement; therefore they were accessories to his crimes of forgery conversion, fraud , theft.

AND FOR A SIXTH CAUSE OF ACTION

Forty six The Plaintiff realleges paragraphs One through Forty five with the same force and affect as specifically pleaded therein.

Forty seven Bank of America Merrill Lynch is responsible for Plaintiffs

loss of her securities representing her retirement funds and of course they are liable. The Defendants were the bailees of Plaintiffs property, but because of their greed and the relationship with Mr. Davis, a miscreant, forger, and all around criminal which they knew about, they cultivated and suborned Mr. Davis's criminality for profit. At no time did the Defendant Bank of America Merrill Lynch question the Plaintiff about the criminal activity going on with her assets. Contrary to duty they assisted Mr. Davis in the theft of \$429,000 at the time, and is now valued at \$1,250,000. Bank of America Merrill Lynch is liable for this loss and a lot more.

Forty eight The actions by Defendant Bank of America Merrill Lynch were irresponsible, reprehensible, corrupt, lawless, *crimen falsi*, contrary to law and in violation thereof. They caused great harm and loss to this Plaintiff.

WHEREFORE,

The Plaintiff requests the following judgment

against the Defendant Bank of America Merrill Lynch:

- (a) Restitution judgment of the Securities current value \$1,250,000.
- (b) An additional monetary judgment for all the stock splits and dividends missed
- © A judgment for punitive damages in amount of \$2,500,000

A jury trial is requested

September 11, 2015

Dt. Pepi Schaffer, MS, JD
10829 Brewer House Road
North Bethesda MD, 20852
301-881-7079
dr.pepi.schaffer@verizon.net

CERTIFICATE OF SERVICE

Plaintiff Pepi Schafner , hereby states under oath and the penalty of perjury that that pursuant to FRCP Rule 4 , (d) (1), a copy of this complaint has been mailed by First6 Class United States Mail, restricted delivery to Mr. Jeff McLane , at Bank of America Merrill Lynch, 4 World Financial Center, New York, NY 10080.

Should the Defendant not accept mail service, and not respond within 30 days, Plaintiff will contact a process server to execute this complaint by Personal service,

Respectfully

Dr. Pepi Schafner, MS, JD
10829 Brewer House Road
North Bethesda MD, 20852
301-881-7079
dr.pepi.schafner@verizon.net